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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES P. WRIGHT,

Defendant and Appellant.

A123590

(Solano County  
Super. Ct. No. FCR222275)

Following a court trial, defendant James P. Wright was convicted of:  
(1) possession of methamphetamine for sale (Health & Saf. Code, § 11378)<sup>1</sup>;  
(2) possession of methamphetamine (§ 11377, subd. (a)); (3) maintaining a place where drugs are sold or used (§ 11366); (4) being in a place where a controlled substance is being used (§ 11365, subd. (a)); and (5) possession of a smoking device (§ 11364). The court also found true an enhancement for a prior conviction of possession for sale (§ 11370.2, subd. (c)) and prior service of a prison term (Pen. Code, § 667.5, subd. (b)). The court imposed sentence but suspended execution, and placed defendant on probation.

Defendant challenges only the sufficiency of the evidence to support his conviction for maintaining a place where drugs are sold or used. (§ 11366.) We conclude the conviction is supported by substantial evidence and affirm the judgment.

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<sup>1</sup> All further statutory references are to the Health and Safety Code unless otherwise indicated.

## **FACTS**

Vacaville Police Officer Stuart Tan testified at trial as follows: He was on patrol with Officer Bryan Larsen on February 25, 2005, around 9 p.m. They went to 136 1/2 West Street (the residence), a small house located behind a larger Victorian house, with the intention of discussing with the occupants recent complaints of drug activity.

Defendant answered the door. Officer Tan recognized him from prior contacts. He also observed a layer of smoke hovering below the ceiling that resembled a cloud of methamphetamine smoke. He asked if they could come in, and defendant consented. He saw Danyette Stevens and Harold Gunlogson seated on a loveseat in the front room. Defendant told Officer Larsen he had been living at the residence for several months while doing repair work on the larger house in front. Defendant said Stevens was also living at the residence. At Stevens' invitation, Gunlogson had moved in several weeks earlier. Defendant stated Stevens and Gunlogson shared a couch in the front room, and he slept in the bedroom. When informed the officers were investigating recent complaints of drug activity, defendant stated his son was responsible. While the officers were talking with defendant, Stevens and Gunlogson, two women arrived, Elise Perez and Melissa Hayes, both of whom had previously been arrested for methamphetamine possession.

Officer Tan conducted a field intoxication test and determined defendant was under the influence of methamphetamine. He arrested defendant and found nine grams of methamphetamine in defendant's pocket.

After obtaining a search warrant, the officers searched the house. They found a utility bill in defendant's name for December 1, 2004 through February 2, 2005. They also found a glass pipe under the loveseat, and another under the table. On the floor nearby, they found a propane torch of the type commonly used as a heat source for smoking methamphetamine.

In the back bedroom, the officers found two larger water pipes that appeared to have been used to smoke methamphetamine. They also found a box of small baggies on a cabinet. Nearby they found a locked black box, and located the key on the table in front

of the loveseat. The box contained four small digital scales, and three packages of methamphetamine. One of the packages was in a plastic bag similar in size to the box of plastic bags the officers had already seized. It contained 1.5 grams of methamphetamine.

Officer Tan also testified as an expert witness. In his opinion, the baggies were similar in size to those typically used for packaging methamphetamine for sale. In his experience, methamphetamine sells on the street for approximately \$10 for one-tenth of a gram. Based upon the quantity, scales, and packaging materials, it was his opinion the methamphetamine found on defendant's person and in the residence was possessed for sale.

Defendant also testified. He stated that in 2005, he was doing renovation work at the larger house at 136 West Street and he was living at 6666 Dusty Trails Road. With the owner's permission, he was using the residence primarily to store tools and clean up, but he did stay there a "couple of times," or "periodically." When he stayed there, he slept in a bed in the front room where the loveseat was located. He admittedly put the utility bill in his own name. He met Stevens through his son, and with the owner's permission, he let her stay at the residence. In early 2005, Stevens invited Gunlogson down from Alaska.

Defendant admitted that in 2004 he was using approximately two grams of methamphetamine a day. He also admitted a prior conviction for selling methamphetamine in 1998, and for possession of stolen property in 1980. In 2004-2005, defendant bought large quantities of methamphetamine for his own use. He had purchased 10 grams of methamphetamine on the day he was arrested. He then met Stevens and Gunlogson at the residence, and they smoked some of the methamphetamine so he could test it to make sure he had not been "ripped off." This was not the first time he had smoked methamphetamine in the residence with Stevens, and he "sometimes" had provided the methamphetamine.

Defendant asserted the officers arrived about 10 minutes after he, Stevens and Gunlogson started smoking. He acknowledged he had protested to Officer Tan that he should not have to submit to an intoxication test because he was in his own home, but

testified he did not actually consider it to be his home. He also denied telling Officer Tan he regularly slept there, or that the bed in the back room was his. Defendant claimed he had never seen the locked box before the day of his arrest and it did not belong to him. He did not recall telling Officer Larsen during the booking process that his address was 136 1/2 West Street, but acknowledged that, after the arrest, the owner of the residence served him with an eviction notice.

Gunlogson also testified for the defense. He stated he moved in with Stevens at 136 1/2 West Street in January 2005. He and Stevens usually slept on the couch in the front room because it was more comfortable than the bed in the back room. Defendant stopped by several times a week to supervise work Gunlogson and Stevens were doing on the house in front, but defendant did not live at the residence. On February 25, 2005, defendant stopped by and asked Stevens and Gunlogson if they had any methamphetamine. While they were smoking together they heard a knock on the door. Defendant answered the door at Gunlogson's request. When defendant saw Officer Tan he stopped opening the door, but Officer Tan walked in anyway. Gunlogson admitted that in February 2008, he was convicted of misdemeanor methamphetamine possession.

## **ANALYSIS**

### *1. Elements of Section 11366*

Section 11366 makes it a criminal offense to “open[] or maintain[] any place for the purpose of unlawfully selling, giving away, or using any controlled substance. . . .” The elements of the offense “are that the defendant (a) opened or maintained a place (b) with a purpose of continuously or repeatedly using it for selling, giving away, or using a controlled substance.” (*People v. Hawkins* (2004) 124 Cal.App.4th 675, 680.) Section 11366 does not require that the defendant maintain the place for the purpose of selling. It may be violated merely by providing a place for drug abusers to gather and share the experience of using drugs. (*People v. Green* (1988) 200 Cal.App.3d 538, 544.)

The courts have held evidence insufficient to support a conviction for violating section 11366, and its predecessor former section 11557, when it indicates only a single instance of selling, giving away, or using, absent evidence of other “circumstances

supporting a reasonable inference that the house was used for the prohibited purposes *continuously or repetitively. . . .*” (*People v. Hawkins, supra*, 124 Cal.App.4th at p. 682, italics added; *People v. Shoals* (1992) 8 Cal.App.4th 475, 491-492; *People v. Horn* (1960) 187 Cal.App.2d 68, 73; *People v. Holland* (1958) 158 Cal.App.2d 583, 588-589.)

Also “section 11366 does not apply to an individual’s continuous or repeated use of controlled substances at home, absent evidence that the individual opened his or her home *to others* for the purpose of selling or giving away to them, or the use by them of such substances.” (*People v. Franco* (2009) 180 Cal.App.4th 713, 724-725 (*Franco*), italics added; see also *People v. Vera* (1999) 69 Cal.App.4th 1100, 1103 (*Vera*) [“We do not read this section to cover mere repeated *solo* use at home.”], italics added.)

## 2. Standard of Review

Defendant contends the evidence is insufficient to support his conviction of violating section 11366 because: (1) The evidence supported no more than an inference of a single instance of using methamphetamine at the residence on the day of the arrest; (2) Even if defendant did use methamphetamine on more than one occasion with Stevens or Gunlogson, this is insufficient to support an inference he opened the premises “*to others*” or maintained it for use by “others,” because Stevens and Gunlogson were his roommates (see *Franco, supra*, 180 Cal.App.4th at pp. 724-725); and (3) There was no evidence of any other circumstances to support an inference that *he* was the person who maintained the premises for the prohibited purposes, or that he did so “*continuously or repetitively. . . .*” (*People v. Hawkins, supra*, 124 Cal.App.4th at p. 682, italics added.)

“ ‘In reviewing the sufficiency of the evidence, we must determine “whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” ’ [Citation.] ‘Substantial evidence’ is evidence which is ‘ “reasonable in nature, credible, and of solid value.” ’ [Citation.]” (*People v. Morgan* (2007) 42 Cal.4th 593, 613-614.) We draw all reasonable inferences, and resolve all conflicts in support of the judgment, and must defer to the credibility determinations of the trier of fact. (*People v. Lewis* (1990) 50 Cal.3d 262, 277; *People v. Johnson* (1980) 26 Cal.3d 557, 576.)

### 3. *Substantial Evidence Supports Defendant's Conviction for Violating Section 11366*

The record simply does not support defendant's claim that the evidence establishes only a single incident of him selling, giving away, or using, methamphetamine at the residence. By his *own admission*, defendant not only supplied some of the methamphetamine he smoked with Stevens and Gunlogson on the day of the arrest, he also had previously smoked methamphetamine with Stevens at the residence, and he "[s]ometimes" provided it to her.

Nor is defendant correct that evidence he and other occupants used methamphetamine on multiple occasions at the residence is insufficient to support an inference he opened the premises "to others" or maintained it for "others" to use for the prohibited purpose. His reliance upon *Franco, supra*, 180 Cal.App.4th 713 and *Vera, supra*, 69 Cal.App.4th 1100, for his broad assertion that section 11366 is not violated by repeated or continuous "[u]se among the people in the household (such as roommates)" is misplaced, because the actual holdings of *Franco* and *Vera* apply only to an individual's *own* repeated use in his or her home.

In *Vera*, the Court of Appeal rejected the defendant's argument his section 11366 conviction did not "necessarily involve moral turpitude" because section 11366 could be violated by mere "personal, sequential use of any of the specified substances in his or her residence." (*Vera, supra*, 69 Cal.App.4th at pp. 1102-1103.) The court held the conviction admissible for impeachment because, like possession for sale, a violation of section 11366 necessarily entails corruption of others and therefore is an offense involving moral turpitude. The court explained: "We do not read [section 11366] to cover mere repeated solo use at home. To 'open' means 'to make available for entry' or 'to make accessible for a particular purpose' (Webster's New Collegiate Dict. (9th ed. 1990) p. 826), and to 'maintain' means 'to continue or persevere in.' [Citation.] When added to the word 'place,' the opening or maintaining of a place indicates the provision of such locality to others." (*Vera*, at p. 1103.) The recognition in *Vera* that section 11366 is not violated by "mere repeated *solo use* at home" falls far short of

defendant's much broader assertion that it is not violated when the defendant allows others to live on the premises and repeatedly uses with them.

For similar reasons, the more recent decision in *Franco* also does not support defendant's contention. In *Franco*, the trial court instructed the jury that to prove a violation of section 11366 "the People must prove that: [¶] 1. The defendant maintained a place; [¶] AND [¶] 2. The defendant maintained the place with the intent to sell or use a controlled substance, specifically cocaine, on a continuous or repeated basis at that place."<sup>2</sup> (*Franco, supra*, 180 Cal.App.4th at p. 719.) On appeal the defendant successfully argued the trial court prejudicially erred because "to be convicted of violating section 11366 on the theory that he maintained a place for the use of controlled substances, the evidence must show that he maintained the place for use of controlled substances *by others*" yet under the instruction given the jury could have convicted him if it found he maintained the "place for his or her own *personal* drug use." (*Id.* at p. 720.) The court held, "section 11366 does not apply to an individual's continuous or repeated use of controlled substances at home." (*Id.* at pp. 724-725.) Since the jury had acquitted the defendant of two charges of possession for sale, and the defendant, who was the lessee of the apartment, admitted he personally and repeatedly used cocaine in it, the court could not rule out the possibility the jury had convicted the defendant on the incorrect legal theory that he violated section 11366 by repeated personal use, alone, in his own residence. It therefore reversed. (*Id.* at pp. 717, 725.) Defendant's assertion that *Franco* includes within the rubric of "personal" drug use evidence of "[u]se among people in a household (such as roommates)" is belied by the fact that, in analyzing whether the defendant could be retried, the court specifically cited evidence *Franco* had repeatedly used cocaine with his roommate Zargoza, as part of the evidence that could

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<sup>2</sup> This instruction did not include a revision to CALCRIM No. 2440 " with the pertinent language in bold: '2. The defendant (opened/[or] maintained) the place with the intent to (sell,/[or] give away,/[or] **allow others to use**) a (controlled substance/[or] narcotic drug), specifically < *insert name of drug*>, on a continuous or repeated basis at that place.' " (*Franco, supra*, 180 Cal.App.4th at p. 719, fn. 3, quoting CALCRIM No. 2440, emphasis added.)

support a conviction of violating section 11366 on retrial under correct instructions. (*Franco*, at p. 726.)

In any event, here, as in *Franco*, other evidence supports a reasonable inference that the use of the premises was not limited to defendant's personal use of methamphetamine, or even to using with other occupants. A large quantity of drugs was found on defendant's person and in the locked box, together with packaging materials, four digital scales and multiple pipes typically used to smoke methamphetamine. An expert testified the methamphetamine was possessed for sale, and defendant was convicted on that count.<sup>3</sup> Moreover, shortly after defendant acquired a very large quantity of methamphetamine, two other individuals, Perez and Hayes, who had prior arrests for possession of methamphetamine arrived at the residence. It is inferable they arrived to purchase or partake. It is immaterial whether Perez and Hayes arrived to purchase methamphetamine or merely to use, because section 11366 prohibits opening or maintaining the premises for the purpose of selling, *using* or *giving away* methamphetamine. Also, when Officer Larsen told defendant they were investigating complaints of narcotic activity, defendant implicitly conceded the existence of such ongoing activity by blaming it on his son.

The foregoing amply supports a reasonable inference the premises were used not only as a place for defendant and "roommates" Stevens and Gunlogson to smoke methamphetamine, but also to stage and execute packaging and sales to others, or for use by others. Indeed, it is very similar to the evidence the court in *Franco* held sufficient to support a conviction of violating section 11366 on retrial under correct instructions. (*Franco*, *supra*, 180 Cal.App.4th at p. 726 [presence of large quantity of drug, four electronic scales, cutting agent and packaging material, large quantity of cash, loaded firearm, and defendant's admission of repeated use with his roommate in the apartment and that roommate brought other women to the apartment constitutes substantial evidence to support section 11366 conviction].)

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<sup>3</sup> Defendant does not even contest the sufficiency of the evidence to support that conviction.



The record also contains evidence supporting a reasonable inference it was *defendant* who “opened, used or maintained the house for the prohibited purposes *continuously or repetitively*. . . .” (*People v. Hawkins*, *supra*, 124 Cal.App.4th at p. 682, italics added.) Defendant argues that like *People v. Holland*, *supra*, 158 Cal.App.2d 583, even if the evidence supports an inference of ongoing sales activity or other instances of use of methamphetamine by others, there was no evidence linking *him* to that activity or supporting any inference he was aware of it. In *Holland*, the court held evidence the defendant, the operator of a barbecue stand, made a single sale to an undercover narcotics agent was insufficient to support a conviction for violating the statutory predecessor of section 11366. Although the same undercover agent made additional purchases at the barbecue stand, none were “proved to have been made by appellant, by an employee of appellant or with the knowledge of the appellant.” (*Holland*, at pp. 588-589.) Nor did any other circumstances support “an inference that appellant was maintaining the stand for the purpose of selling narcotics.” (*Id.* at p. 588.) By contrast here, defendant’s testimony that (1) he put the utility bill in his name, (2) he was the person who gave Stevens permission to stay there, (3) he occasionally stayed there himself, and (4) the owner served him with an eviction notice, amply supports an inference defendant had control of the premises. The fact he had on his person a larger amount of methamphetamine than any other occupant also supports the inference he was the person in charge of selling or supplying to others.<sup>4</sup> Moreover, the court explicitly resolved against defendant the conflicting testimony on the question whether the room in which

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<sup>4</sup> Of course evidence of possession of a quantity of drugs sufficient to support an inference of possession for sale, standing alone, is not sufficient to establish a violation of section 11366. (See *People v. Shoals*, *supra*, 8 Cal.App.4th at p. 491.) Here, however, other circumstances support an inference the premises were maintained for the prohibited purpose, including the presence in the house of people who had just been smoking methamphetamine, the presence of scales packaging material and smoking pipes, and defendant’s admission he had smoked methamphetamine with Stevens at the residence and provided her with methamphetamine on prior occasions. (Cf. *id.* at p. 492 [court cited the absence of drug paraphernalia or people under influence as reasons why possession of large quantity of drugs alone was insufficient to support section 11366 conviction].)

the packaging materials were found was his. Also, instead of denying the officer's reference to complaints of narcotic activity, defendant blamed the activity on his son, implying knowledge of such ongoing activity. This is substantial evidence that sales or use took place repeatedly at the residence, that defendant was aware of it, that he was in control of the residence and that he likely was the primary, if not the exclusive, actor in providing or selling the drug to others.

Finally, although defendant attempts to draw an analogy between the evidence in this case and the evidence this court in *People v. Horn*, *supra*, 187 Cal.App.2d 68, found insufficient, the evidence here is quite different. In *Horn*, two San Francisco police officers on narcotics duty had stationed themselves outside an apartment rented to a "Mr. and Mrs. Horn." They overheard someone inside saying " '[g]ive me the next fix.' " (*Id.* at p. 71.) The officers attempted to gain entrance by knocking on the door. When someone inside asked who was there an officer replied: "Tommy, from Oakland." No one opened the door. After hearing movement and identifying themselves as police officers, they forced open the door. The officers found five or six people inside, and saw the defendant leaving through the front window. (*Ibid.*) This court held the evidence supported no more than an inference of a single use of the apartment for the purpose of selling, giving away, or using narcotics. It noted the absence of other circumstantial evidence to support an inference of similar use on prior occasions such as the presence of a large quantity of narcotics, or evidence any of the occupants were currently addicts, or had previously used narcotics in the apartment. (*Id.* at pp. 73-74.) By contrast, here, the prosecution presented evidence of a very large quantity of methamphetamine in the house and on defendant's person, together with other indicia of ongoing sales activity such as scales and packaging materials. Moreover, defendant admitted he was a current methamphetamine addict, and that he had himself smoked and previously provided methamphetamine to others to smoke at the residence.

In short, defendant's conviction of violating section 11366 is supported by ample evidence.

## CONCLUSION

The judgment is affirmed.

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Banke, J.

We concur:

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Margulies, Acting P. J.

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Dondero, J.